available at the site of the proposed development. They also had discussions with these Departments and the planning authorities. Draft plans were drawn up and later finalised after the defendants had approved them. These plans were submitted to the Planning Department and were sufficient for the Planning Department to give "in principle" approval. The planning authorities however returned the plans without approving or disapproving them. The plaintiffs were requested to re-submit the plans. It was at this stage that the contract was terminated.

On this evidence, D'Cotta J. made the following finding: —

"The architects are basing their claim under clause 3(ii). The work done by the architects is set out in AB15. Clause 3(ii) envisages 'in principle' approval being obtained which will entitle the architects to a fee of one-third of the appropriate percentage due on the estimated cost of such works. The architects' proposal dated 13th July 1973 (Exhibit AB15) addressed to the Chief Planner was not even considered by the Planning Department (vide Exhibit AB24, para. 4). In AB46 dated 18th November 1974, the Permanent Secretary (National Development) requested the developers to resubmit their plans for consideration. From the evidence I find that the provisions of clause 3(ii) had not as yet been complied with by the architects.

In my judgment the architects are entitled to the fees for work done by them on a quantum meruit basis i.e. up to the date of termination of the contract: in other words under clause 3(i) which is the first stage and the bill originally submitted by them — AB15 and again on 10th June 1974 (AB53) — is for progress fees for services rendered to date. The italics words are the architects' own words in para. 1 of AB38. There will accordingly be judgment for the plaintiffs for the sum of $76,000 and costs."

The defendants now appeal against the judgment entered against them and maintain that the plaintiffs' claim should have been dismissed. The plaintiffs have cross-appealed and they contend that the judgment should have been entered for $152,000 being one-third of eight per cent of the estimated cost of the project. They claim that they are entitled to this sum under clause 3(ii) of the Singapore Institute of Architects Scale of Professional Charges.

Before us counsel for the defendants repeated the submissions he made in the court below, namely, that it was the plaintiffs who were in breach of the contract and that as the work done by them was of no beneficial use to the defendants the claim of the plaintiffs should have been dismissed. On the other hand counsel for the plaintiffs submits that even though the plaintiffs were in breach of their contract they were nevertheless entitled to claim remuneration for the partial services that they had rendered and that such remuneration must be calculated in accordance with the Singapore Institute of Architects Scale of Professional Charges.

We are unable to accept the submission of counsel for the defendants that the plaintiffs' claim should have been dismissed on the ground that they were in breach of their contract. The contract specifically provided that "the terms and conditions of engagement shall be in accordance with the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges". Clause 3 of the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges specifically provides that "the architect is entitled to payment in stages. . ." and also provides that where, "for any reason" including if the services of the architect is terminated, the architect performs only partial services, he is nevertheless entitled to payment in accordance with the scale laid down therein. Whether or not the work done by the architect is useful or beneficial to the other party has no bearing on the question of payment for the services rendered by the architect. The plaintiffs are therefore entitled to recover payment from the defendants for the work done on their behalf.

The plaintiffs' breach of their contract, which is really the main defence of the defendants, entitled the defendants at common law to claim damages from the plaintiffs. The defendants could have counterclaimed for damages for the said breach but they have failed to do so.

In our opinion the trial judge misapplied the provisions of clause 3(ii) of the Singapore Institute of Architects Scale of Professional Charges. "In principle" approval is not a requirement for the application of clause 3(ii). What is required is that the plans should be sufficient for "application to be made for planning approval and for 'in principle' approval". The plaintiffs had clearly complied with this requirement and they had in fact submitted plans for "in principle" approval. In any case, the work done by them was in excess of that required under clause 3(i) and by virtue of the provisions of clause 3(viii) they were entitled to payment under clause 3(ii) i.e. one-third of eight per cent of the estimated cost of the project. The cost of the project was estimated by the plaintiffs at $5.7 million. This figure was not challenged at the trial. The plaintiffs are therefore entitled to $152,000 being one-third of eight per cent of $5.7 million.

The appeal by the defendants is dismissed with costs. The cross-appeal by the plaintiffs is allowed. There will be judgment for the plaintiffs in the sum of $152,000 and costs as taxed.

Appeal dismissed;
Cross-appeal allowed.

Solicitors: *P. Suppiah & Co.; Tan Jin Hwee & Co.*

YEO GEK LANG v. ALICE WEE

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) January 9, 1979]

[Singapore — Civil Appeal No. 3 of 1978]

Land Law — Sale of property — Offer to purchase for $164,000 — Refusal of purchaser to complete purchase — Whether negotiations amounted to a contract — Claim for breach of contract — Damages awarded — Appeal.

Solicitors — Sale of property — Agency — Solicitors not agent of clients to conclude contract for them in absence of specific authority.

Agency — Solicitors — In absence of specific authority solicitors not agents of clients to conclude contract for them.

This is an appeal from the decision of D'Cotta J. (see [1978] 1 M.L.J. 196) in the court below. The property in question was No. 95 Jalan Senang. The defendant/appellant offered to purchase it from the respondent for $164,000 subject to contract. The appellant paid the 10% deposit to her own solicitors. Negotiations as to the terms of the contract

ensued between the parties' solicitors. The document of Transfer and Restriction had been executed by the parties but the appellant refused to complete. The respondent subsequently sold the property to another purchaser for $142,000 and sued the appellant for $22,000 and interest as damages for breach of contract. The trial court allowed the respondent's claim.

The court had to decide whether on the true construction of the letters passing between the respondent's solicitors and the appellant's solicitors there was a concluded contract between the parties for the sale of the said property.

Held, allowing the appeal: (1) the law is settled that solicitors are not, in the absence of specific authority, agents of their clients to conclude a contract for them;

(2) there was no evidence in this case that the appellant had authorised her solicitors to negotiate and conclude such a bargain for her;

(3) the respondent had therefore failed at the trial to prove that there was a binding agreement between her and the appellant for the sale of the said property.

Cases referred to:-

(1) *Lockett* v. *Norman-Wright* [1925] Ch. 56. 62.

(2) *Eccles* v. *Bryant* [1947] 2 All E.R. 865.

(3) *D'Silva* v. *Lister House Development Ltd.* [1970] 1 All E.R. 858, 866.

CIVIL APPEAL.

L.A.J. Smith for the appellant.

Abdul Rashid bin Abdul Gani for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): No. 95, Jalan Senang, Singapore was one of many houses built in 1971 by Kim Toh Realty Pte. Ltd. who sold it to a Madam Tan Khuen Tai and her husband. The property boom was on and before the property was conveyed to the purchasers, it was resold to Alice Wee In Neo, the respondent in this appeal. But before the sale and sub-sale were completed, Madam Yeo Gek Lang, the appellant, offered to purchase it from the respondent for $164,000. This was sometime towards the end of March 1973.

The day after the offer the parties assembled at the office of the respondent's solicitors, Messrs. Murphy & Dunbar, as a result of which Messrs. Murphy & Dunbar wrote a letter dated April 4, 1973 to the appellant's solicitors, Messrs. Wee Swee Teow & Co. This letter reads: —

"Dear Sirs,

re: No. 95, Jalan Senang, Singapore

We act for Madam Alice Wee In Neo who has agreed to sell the above property, subject to contract, at a price of $164,000 to Madam Yeo Gek Lang for whom we understand you act.

We enclose herewith:—

1. Draft contract in duplicate for your approval.
2. Photostat copy of the agreement dated 20th June 1970 made between Kim Toh Realty Company Private Limited of the one part and Leong Kok Wah and Tan Khuen Tai @ Wong Seng Loi of the other part.
3. Photostat copy of the grant of Letters of Administration in Probate No. 645 of 1971 in respect of the estate of Leong Kok Wah, decd.
4. Photostat copy of the agreement which our client has entered into with Madam Tan Khuen Tai and dated 20th February 1973.
5. Photostat copy of the requisitions on the Title with the answers on behalf of Madam Tan Khuen Tai.
6. Photostat copy of the duplicate certificate of Title registered in Volume 86 Folio 1996.

Please let us have one copy of the draft contract duly approved by you as soon as possible.

Yours faithfully,
sd. Murphy & Dunbar."

It is to be noted that this letter states that the respondent had agreed to sell the property, "subject to contract", and that a draft contract for the sale and purchase of the property was enclosed in this letter for the approval of the appellant's solicitors. There can be no doubt that at this stage there was no oral contract and that the parties were in the negotiating stage. The draft contract of course contained the names of the parties and the property and the purchase price.

The appellant's solicitors on the same day wrote acknowledging the letter and confirming that they were acting for the appellant. On April 12, 1973 the respondent's solicitors wrote to the appellant's solicitors requesting "the return of the draft contract duly approved by you without delay". In reply the appellant's solicitors wrote on April 16, 1973 stating that they were proceeding with their "investigation into the title of the property" and on April 18, 1973 they wrote to the respondent's solicitors stating that they had received from their client the requisite 10% deposit and that they were "of the view that Clause 5 of the Agreement herein should be amended. . .". This letter crossed a letter of the same date from the respondent's solicitors which referred to their letter of April 12, 1973 and stating that "our instructions are that if your client does not sign the contract to purchase and let us have return of one copy of the contract by April 1973 our client reserves the right to sell the property in question to others". It is plain from the correspondence up to April 18, 1973 that the parties were still in the negotiating stage.

On May 24, 1973 the appellant's solicitors wrote to the respondent's solicitors a letter which reads as follows: —

"Dear Sirs,

re: No. 95 Jalan Senang

We refer to the above matter and to the telephone conversation between your Mr. Ho and our Mrs. Hui on the 23rd instant whereby Mr. Ho confirmed that your client will procure a registrable transfer of the above property direct from the Developer Kim Toh Realty Company (Pte) Ltd. to our client.

We believe that the Developer has the printed form of Transfer herein comprising the right to use the septic tank and the estate road and creating party wall rights. The Developer has also a printed Restriction form for signature by the Purchaser. We shall be obliged if you will let us have a set of Transfer and Restriction forms for our use. On receiving the same we shall be in a position to send the draft Transfer in duplicate for your approval.

We shall on completion pay the whole purchase price less 5% retention monies pending the issue of the Certificate of Fitness for Occupation in exchange for:—

(1) Certificate of Title Volume 86 Folio 196;
(2) Transfer duly executed in favour of our client;
(3) Architect's certificates of completion;
(4) Certificates of numbering.

Yours faithfully,
sd. Wee Swee Teow & Co."

On June 28, 1973 the respondent's solicitors sent to the appellant's solicitors for their use as requested the Transfer and Restriction forms and on July 7, 1973

the appellant's solicitors wrote to the respondent's solicitors forwarding "draft Transfer and Restriction (in duplicate) for your approval". This letter was acknowledged by the respondent's solicitors by a letter dated July 25, 1973 enclosing "the draft Transfer and Restriction duly approved by all parties concerned for your attention". On August 3, 1973 the appellant's solicitors wrote to the respondent's solicitors a letter which reads: —

"Dear Sirs,

re: No. 95 Senang Crescent

We thank you for your letter of the 25th instant together with enclosure.

We forward herewith the engrossment of Transfer and Restriction for execution by your clients.

Yours faithfully,
sd. Wee Swee Teow & Co."

To this letter the respondent's solicitors replied by letter dated August 23, 1973 as follows: —

"Dear Sirs,

re: No. 95 Jalan Senang

We write to inform you that the Transfer and Restriction have been executed by all parties concerned and that all parties are ready for completion of this matter by 31st August 1973. We suggest completion at the office of Chia & Poh at 2.30 p.m. on 31st August 1973.

Please note that on completion we shall require three Cashiers' Orders, one for the sum of $17,519.03 in favour of Messrs. Chia & Poh, one for the sum of $102,796.07 in favour of Messrs. Lui Boon Poh & Co., and the balance of $44,499.90 to be made in our favour making a total sum of $164,815 as stated in our letter of 6th July 1973.

Should you prefer a completion date earlier than 31st August 1973 please telephone us to enable us to liaise with Messrs. Chia & Poh and Messrs. Lui Boon Poh & Co.

Your faithfully,
sd. Murphy & Dunbar."

On the appointed date for completion the appellant's solicitors wrote to the respondent's solicitors a letter which reads as follows:—

"Dear Sirs,

re: No. 95 Jalan Senang

We refer to the above matter.

We are instructed by our client that she has never seen the above premises and that despite repeated requests by her your client has not been able to show her the said premises. We are further instructed by our client to request for an appointment to inspect the said premises.

We are further instructed by our client that on the condition she finds the said premises satisfactory she will complete the purchase herein within three weeks from the date hereof.

Yours faithfully,
sd. Wee Swee Teow & Co."

This unexpected development evoked a sharp reply from the respondent's solicitors on September 1. The reply, *inter alia*, stated: —

"We have your letter of 31st August 1973. Our client categorically denies your client's unfounded allegation of not being afforded the opportunity to inspect the premises....

....

As far as we are concerned, the contract was complete. Engrossment of Transfer and Restriction were duly and properly executed by all parties concerned and completion was to have taken place on 31st August 1973.

As required and as instructed by our client, we hereby give you 10 days' notice to complete the purchase in this matter, failing which, our client will treat the contract with your client as ended by your client's breach..."

On September 3, 1973 the appellant's solicitors acknowledged the letter of September 1, 1973 and in their acknowledgment letter, *inter alia*, stated: —

"We are further instructed by our client that she found the above premises unsatisfactory and she does not wish to proceed with the proposed purchase herein....

Reference to paragraph 4 of your said letter, our client denies that there is a contract for Sale and Purchase in respect of the above property. Correspondence in the matter relates to terms of negotiations only. No consideration has ever passed from our client to your client in respect of the above matter. Accordingly, your client is not in a position to give a Notice to complete."

In February 1974 the respondent sold the property to another purchaser for $142,000 and in July 1974 they instituted proceedings in the High Court against the appellant claiming $22,000 and interest as damages for breach of "*a contract in writing contained in letters* which passed between the (respondent) by her solicitors and the (appellant) by her solicitors during the period 4th of April 1973 and 7th of September 1973 for the sale by the (respondent) to the (appellant) of ... No. 95 Jalan Senang, Singapore" as endorsed in the Writ. The Amended Statement of Claim repeats that "*by an agreement in writing in letters passed* between the (respondent) and her solicitors and the (appellant) and her solicitors during the period of April 4, 1973 and September 6, 1973 it was agreed between the (respondent) and the (appellant) that the (respondent) shall sell to the (appellant) and the (appellant) shall purchase from the (respondent) ... No. 95, Jalan Senang...". (the emphasis is ours).

It is plain from her pleadings that the respondent's case did not rest on a prior oral agreement between her and the appellant and her evidence at the trial was to the same effect. She said that the appellant came to her house at the beginning of April and offered her $164,000 for the property but she and her husband decided to wait till the next day. Her evidence at the trial with regard to the correspondence passing between her solicitors and the appellant's solicitors was as follows: —

"I didn't know that my solicitors and her solicitors were negotiating for the purchase of the house. I knew the defendant wanted to buy the house. I knew she had her own solicitors. I knew there was some correspondence between my lawyers and her lawyers. Some time in July I went to my solicitors' office to sign the transfer (witness identifies her signature on the transfer). I knew completion was to be on 31-8-1973."

The first question that had to be decided at the trial was whether on the true construction of the letters passing between the respondent's solicitors and the appellant's solicitors there was a concluded contract between the respondent and the appellant for the sale and purchase of No. 95, Jalan Senang. The answer to this question must, in our judgment, depend upon whether or not the solicitors were authorised by their respective clients to continue the negotiations and to conclude a bargain for the sale and purchase of this property.

So far as the respondent's case is concerned, there was no direct evidence that she authorised her solicitors to conclude a bargain for her. The inference from her solicitors' letter of April 4, 1973 is that she was willing to sell the property at the offer price of $164,000 "subject to contract" and that the scope of her solicitors' authority was limited only to that.

If that was the position and, if on the true construction of the letters we have already set out, her solicitors had concluded an open contract for her it seems to us that by her signing the engrossed Transfer she had ratified the bargain made by her solicitors.

So far as the appellant is concerned, the evidence was that she was never asked by her solicitors to agree to the terms of, nor did she sign, the draft contract sent by the respondent's solicitors to her solicitors. Even if her solicitors had, by the correspondence, concluded an open contract for her, there was no evidence whatever that she authorised her solicitors to negotiate and conclude such a bargain for her. There was also no evidence whatever that she ratified the unauthorised bargain struck by her solicitors, nor can such an inference be drawn from all the evidence. The law is settled that solicitors are not, in the absence of specific authority, agents of their clients to conclude a contract for them. (see *Lockett* v. *Norman-Wright;*[1] *Eccles* v. *Bryant*[2] and *D'Silva* v. *Lister House Development Ltd.*[3]

Unfortunately, it would appear from the Record of Appeal that this vital question was never brought to the attention of the trial judge. In our judgment, the respondent had failed at the trial to prove that there was a binding agreement between her and the appellant for the sale of No. 95, Jalan Senang and her claim against the appellant for damages for breach of contract for the sale and purchase of No. 95, Jalan Senang ought to have been dismissed. That being so, it becomes unnecessary for us to consider the other grounds raised in this appeal and in the result the appeal is allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *L.A.J. Smith; Khattar, Wong & Partners.*

THE "AMERICAN ASTRONAUT"; KIAN HIN HANG (PTE) LTD. v. "AMERICAN ASTRONAUT" OWNERS & ORS.

[O.C.J. (Choor Singh J.) January 5, 1979]
[Singapore — Admiralty *In Rem* No. 454 of 1975]

Shipping Law — Container — 580 cartons of toilet soap packed in sealed container — Short-delivery — Claim for loss of 205 cartons of toilet soap — Bills of lading — Conditions attached — United States Carriage of Goods by Sea Act, 1936, s. 3(3), (4) & (8) — Evidence Act (Cap. 5), s. 115.

Bill of Lading — Conditions "shipper's load and count" and "shipper's load, stowage and count" stamped on bill of lading — Effect of — United States Carriage of Goods by Sea Act, 1936, s. 3(3), (4) & (8) — Evidence Act (Cap. 5), s. 115.

The plaintiffs in this case, holders of a bill of lading issued in New York claimed $16,912.50 as damages against the defendants for short delivery of 205 cartons of toilet soap. Under the said bill of lading, 580 cartons of toilet soap were shipped on board the first defendant's vessel the "American Astronaut" for carriage from New York to Singapore. The said 580 cartons were transhipped at Hong Kong for delivery to Singapore on board the second defendant's vessel "American Mist."

Evidence showed that the "American Mist" discharged its cargo at Godown No. 48 at the Port of Singapore wharf. On December 5, 1974 the container was opened and its contents were unpacked by a contractor employed by Anglo-French Co. Pte. Ltd., the Singapore agents for the owners of the "American Astronaut." The contractor supplied tally clerks and labourers for the operation. No representative of either the P.S.A. or Anglo-French Co. Pte. Ltd., or the consignees of the cargo was present when the container was opened.

On December 6, 1974 when the plaintiffs' delivery clerk went to Godown No. 48 to take delivery of 580 cartons of Camay soap consigned to his company, he found only 375 cartons in the godown. There was correspondence between the plaintiffs and the P.S.A. but to no avail. The 205 missing cartons could not be found. The defendants did not call any eyewitness who was present when the container was opened and its contents unpacked. The contractor employed for this operation was not called. The defendants contended, *inter alia*, that the bill of lading did not yield *prima facie* evidence of the number of cartons that had been shipped from New York because of the conditions stamped on the bill of lading — "shipper's load and count" and "shipper's load, stowage and count."

The bill of lading applied the terms, provisions and conditions of the United States Carriage of Goods by Sea Act, 1936. Section 3(3)(c) of the said Act provides: "... no carrier ... shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground..." to doubt. Section 3(4) provides that the bill of lading shall be *prima facie* evidence of receipt by the carrier of the goods.

Held, allowing the plaintiffs' claim: (1) if a carrier were to doubt a statement of the shipper, he should not inscribe on the bill of lading the statement he doubts;

(2) to issue a bill of lading containing statements of the number of cartons and their weight and then to qualify them by such phrases as "shipper's load and count" would be contrary to section 3(3)(c) of the United States Carriage of Goods by Sea Act, 1936;

(3) such phrases as "shipper's load and count" were a form of non-responsibility clause and were contrary to section 3(8) of the said Act;

(4) it is fundamental that where a carrier receives a container packed and sealed by the shipper, the carrier has no right to open it on his own, and if he does, as in this case, he becomes liable for any shortage of the goods stated in the bill of lading;

(5) the failure to call the contractor or any of his staff (who was responsible for unpacking the container in question) to testify as to the number of cartons of soap found in the container raised the presumption under section 115 of the Evidence Act that if called their evidence would have been unfavourable to the defendants;

(6) the plaintiffs were not disentitled by the conditions in the bill of lading from relying on the admission that cartons to the number stated in the bill of lading were packed. The defendants were accordingly under an obligation to deliver the full number of cartons.

Cases referred to:-

(1) *Spanish American Skin Co.* v. *M.S. Ferngulf* [1957] A.M.C. 611.

(2) *Canada & Dominion Sugar Co. Ltd.* v. *Canadian National (West Indies) Steamships Ltd.* [1947] A.C. 46.

(3) *A.G. of Ceylon* v. *Scindia Steam Navigation Co.* [1962] A.C. 60.

ADMIRALTY *IN REM.*

K.C. Chan for the plaintiffs.

G. Punnirselvam for the defendants.

Choor Singh J.: In this action the plaintiffs claimed damages for the loss of cargo shipped from New York to Singapore in a container.

The plaintiffs claimed $16,912.50 being the cost of 205 cartons of toilet soap shipped from New York on the defendants' vessel "American Astronaut" and